

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

RONALD N. NILSON, ROBERTA CHURCH
AND EUGENE BUTLER,

Petitioners,

v.

LEWIS COUNTY,

Respondent,

and,

FORECASTLE TIMBER COMPANY, LLC,

Intervenor.

Case No. 11-2-0003

**ORDER FINDING
COMPLIANCE AND DISMISSING CASE**

THIS Matter came before the Board for hearing on April 23, 2013, following submittal of Lewis County's Report on Compliance.¹ The Petitioners filed responses to the County's Report stating they had no objection to a compliance finding.² The compliance hearing was held telephonically and was attended by Board members Nina Carter and William Roehl, with Mr. Roehl presiding.

I. BACKGROUND

The Petition for Review in this matter challenged Lewis County's adoption of Resolution No. 10-359 and Ordinance No. 1219 which amended the County's Comprehensive Plan and development regulations. Until adoption of the Resolution and Ordinance, 2082 acres owned by Forecastle Timber Company, LLC had been designated

¹ Filed March 1, 2013.

² Petitioner Butler's Response to Compliance, filed March 18, 2013; Petitioners' Response to Compliance, filed on March 21, 2013, by Ronald N. Nilson, individually, as Coordinator of Friends of Mineral Lake and by Roberta Church.

1 as Forest Land of Long-Term Commercial Significance pursuant to RCW 36.70A.170(1)(b).
2 The then applicable zoning allowed division of the property into twenty-five 80 acre parcels.
3 The Resolution and Ordinance redesignated 830 acres as Forest Land of Local Importance
4 which allowed subdivision of that acreage into 20 acre parcels.³

5 The Board found the Resolution and Ordinance violated RCW 36.70A.070
6 (preamble) and RCW 36.70A.130(1)(d) as their adoption resulted in an inconsistent
7 Comprehensive Plan Land Use Map and an inconsistent zoning map. Similarly situated
8 properties were designated and zoned differently on both the Comprehensive Plan Land
9 Use Map and the zoning map.⁴

10 The County adopted Resolution 12-184 and Ordinance 1238 during its first attempt to
11 achieve compliance. Those actions separated the Comprehensive Plan Land Use Map from
12 the zoning map. However, the Board found Lewis County's action had failed to achieve
13 compliance with RCW 36.70A.070 (preamble) and RCW 36.70A.130(1)(d) and again
14 remanded the matter.⁵

15 At the April 23, 2013, Compliance Hearing, Lewis County was represented by Glenn
16 J. Carter. Counsel for the Petitioners was Wyatt Golding. Petitioners Nilson, Church and
17 Butler all spoke. Forecastle Timber Company, LLC did not appear.

21 II. BURDEN OF PROOF

22 Following a finding of noncompliance, the jurisdiction is given a period of time to
23 adopt legislation to achieve compliance.⁶ After the period for compliance has expired, the
24 Board is required to hold a hearing to determine whether the local jurisdiction has achieved
25 compliance.⁷ For purposes of Board review of the comprehensive plans and development
26 regulations adopted by local governments in response to a noncompliance finding, the
27 presumption of validity applies and the burden is on the challenger to establish the new
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30 ³ In the FDO the Board determined there were two categories of GMA designated forest resource lands under
31 the Lewis County Code, only one of which was named "Forest Land of Long-Term Commercial Significance."
32 The other is entitled "Forest Land of Local Importance."

⁴ Final Decision and Order, August 31, 2011.

⁵ Compliance Order, September 6, 2012.

⁶ RCW 36.70A.300(3)(b).

⁷ RCW 36.70A.330(1) and (2).

1 adoption is clearly erroneous.⁸ In order to find Lewis County's action clearly erroneous, the
2 Board must be "left with the firm and definite conviction that a mistake has been made."⁹

3 The burden is thus on the Petitioners to overcome the presumption of validity by
4 demonstrating the action taken by the County is clearly erroneous in light of the goals and
5 requirements of chapter 36.70A RCW (the Growth Management Act).
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7 8 **III. DISCUSSION**

9 The sole issue before the Board is whether Lewis County County's action in
10 response to the Board's FDO appropriately addresses the violations of RCW 36.70A.070
11 (preamble) and RCW 36.70A.130(1)(d) as set forth in the FDO. In this instance, the
12 Petitioners do not dispute the County has achieved compliance. On December 17, 2012,
13 the County rescinded the portions of the originally challenged Resolution No. 10-359 and
14 Ordinance No. 1219 which rezoned Intervenor's property and restored the Forest Resource
15 Land of Long Term Commercial Significance designation and the zoning to that which
16 existed prior to adoption of the challenged legislation.¹⁰ The Board finds and concludes the
17 adoption of Resolution No. 12-359 and Ordinance No. 1241 removed the Board's basis for
18 its non-compliance finding.¹¹
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20 21 **IV. ORDER**

22 Based on the foregoing, the Board determines Lewis County, through the adoption of
23 Resolution No. 12-359 and Ordinance No. 1241, has addressed the findings of
24 noncompliance as set out in the Board's August 31, 2011, Final Decision and Order and
25 Compliance Order of September 6, 2012. The case is CLOSED.
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30 ⁸ RCW 36.70A.320(1), (2) and (3).

31 ⁹ *Department of Ecology v. PUD 1*, 121 Wn.2d 179, 201, (1993).

32 ¹⁰ During the Compliance Hearing, the parties clarified that Resolution No. 12-359 and Ordinance No. 1241 had the effect of repealing specific portions of the challenged legislation: Ordinance 1219, Section 5 and Resolution 10-359, Section G.

¹¹ See *Panesko v. Lewis County*, GMHB Case No. 08-2-0007c, (Compliance Order, July 27, 2009 at 11): "By rescinding the expansion of the Curtis LAMIRD and restoring the property to its zoning immediately before the challenged action the County has removed the Board's basis for a finding of non-compliance as found in the FDO."

1 Dated this 25th day of April, 2013.

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6 William Roehl, Board Member
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10 Nina Carter, Board Member

11 **Note: This is a final decision and order of the Growth Management Hearings Board**
12 **issued pursuant to RCW 36.70A.300.¹²**
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32 ¹² Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.